HIGH COURT OF DELHI : NEW DELHI

W.P(C) 19681 OF 2005

Judgment reserved on: September 21, 2007
Judgment delivered on: November 30,2007

Dr. Dinesh Kumar Paliwal ..... Petitioner
Through: Mr. J. P. Sengh, Advocate

versus

$ Union of India & Anr. ..... Respondent
^ Through: Ms. Meera Bhatia with
Ms. Pooja Aganpal, Advocates
for respondents no.1 & 2

***CORAM:**
HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

VIPIN SANGHI, J.

1. By this order, we propose to dispose of the above writ preferred under Article 226 of the Constitution. The petitioner seeks quashing of the judgment of the Central Administrative Tribunal(for short the CAT) dated 8.12.2004 in O.A No.2695/03 and the order dated 8.4.2005 dismissing the review application filed by the petitioner being R.A.No.90/05. A direction to the respondent to count the past service

of the petitioner rendered with KLP College, Rewari for all purposes has also been sought. Brief facts of the case are as follows:-

2. The petitioner was employed with Kishan Lal Public College (KLP College), Rewari as a lecturer. After having served them for about 11 years, the petitioner joined Central Government Service on 12.11.1992 as a regular Assistant Educational Advisor(General) in the Ministry of Human Resource Development. The basic pay of the petitioner was fixed at Rs.3,000/- per month being the minimum of the scale of Rs.3000- 4500, though as a lecturer with KLP College, the petitioner was drawing higher pay in the scale of pay of Rs.3,000-5,000/-. On 14.12.1992, the petitioner made a request for the protection of his pay claiming that the said college was an autonomous body of the Government of Haryana since it received 95% grants from the said government. On 10.5.1994 the petitioner's request was acceded to and he was granted the benefit of pay protection. Thereafter on 27.4.1994 the petitioner requested the respondent to count his past service rendered with the KLP College, Rewari for pension and other benefits. However, by its communication dated 22.1.1996 the respondent rejected the claim of the petitioner on the ground that the mobility order 29.8.1984 of the DOP & T was not applicable to KLP college. Consequently, the petitioner filed OA No.490/1996 before the CAT against the said communication rejecting his claim to count his past service rendered with KLP college. The said OA was disposed of vide

order dated 9.12.1999 with the direction to the respondent to consider the case of the petitioner in the light of the observations made by the Tribunal in the said order. One of the observations made by the Tribunal was to the effect that the KLP college was indeed receiving grants exceeding more than 50% of the requirement of the college. The effect of this observation would be dealt with later in this judgment.

3. The respondent challenged the said order of the Tribunal by filing a writ petition before this Court, which came to be dismissed on 14.9.2001. Thereafter, upon reconsideration of the petitioner's claim, the respondents once again rejected the request of the petitioner on on 12.3.2003, on the ground that KLP college was not an autonomous body. Relevant extract of the stand of the respondents as contained in the communication dated 12.3.2003, reads as follows:-

> "2. The matter has been re-examined in detail in the Department pursuant to the two personal hearings given to Dr. D.K. Paliwal and the documents submitted by him.
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> 3. The issue hinges on whether KLP College, Rewari (Haryana) can be considered to be an autonomous organisation as required under government Rules for the counting of past service rendered by Dr. Paliwal for pensionary benefits under the central Government. The following relevant facts clarified this issue:
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> (i) In order to be an autonomous body for the purpose of counting of past service rendered

there for pensionary benefits under the Central Government, the concerned institution must be a Society registered under the Societies Registration Act, 1860 or a body created by Statute or a Central university having its own Governing Council. KLP College, Rewari, is none of these.

(ii) Further, in continuation with (i) above, such an autonomous organisation should have provision in Memorandum of Association/By-laws, etc. of its Governing Council for complying with Government directives for carrying out its business in achieving the objectives for which the organisation is established. KLP College, Rewari, is run by the "Public Education Board, Rewari", which is a society registered under Socities Registration Act, 1860. There are no provisions in the Memorandum of Association of this society.

(iii) The authorities of KLP College, Rewari have informed that their college is not an autonomous body.

(iv) Government of Haryana has also informed that KLP College, Rewari, is neither an autonomous body nor can be treated as an autonomous body.

4. In light of these views, the said KLP College, Rewari (Haryana) cannot qualify as an autonomous organisation for the purposes of counting of past service of Dr.Paliwal for pensionary benefits under the Central Government.

5. As stated in para 3 above, counting of past service of Dr.Dineshy Kumar Paliwal rendered at KLP College, Rewari is dependent on the College being an autonomous organisation as defined under various rules of the Government. Neither does the College qualify to be called an autonomous organisation nor does the

college consider itself to be such an organisation as stated by them.

6. Dr. Paliwal has been heard in person on the subject on two occasions, i.e., on 22.1.2002 and 23.8.2002. On both occasions, no new information was provided by him on the basis of which the earlier decision of the Department would merit a review."

Dr. Dinesh Kumar Paliwal, Deputy Education Advisor (General) with Department of Elementary Education and Literacy, Ministry of Human Resource development is hereby informed that his requests for counting of past service rendered by him at KLP College, Rewari for the purpose of pensionary benefits not being covered in the rules is not agreed to.

4. To challenge the aforesaid communication of rejection of his claim, the petitioner preferred OA No.2695/2003, which came to be dismissed on 8.12.2004. A review application was also filed which was also dismissed by the Tribunal on 8.4.2005. Both these orders are impugned in the instant writ petition.

5. The main thrust of the petitioner's argument is that while disposing off the earlier OA No.490/ the Tribunal had held that the KLP College received grants exceeding 50% of its expenditure. This was a finding of fact returned by the Tribunal which was affirmed by the High Court when it dismissed the writ petition filed by the respondent. This finding thus, attained finality. This finding is in effect a finding that the KLP college is in fact an autonomous body. Once, a fact stood established it became *res judicata* and it was not open for the Tribunal

to re-appreciate the issue and upset the finding arrived at in a prior litigation *inter partes.*

6. The respondent has not filed any counter affidavit but only written submissions have been filed in support of their stand. First and foremost it is contended that the petitioner had left the services of the KLP College on 11.11.1992, yet he claimed the counting of his past service only on 27.4.1994. As per the "mobility order" the option to receive either the CPF benefit or to count the previous service as qualifying service for purposes of computation of pension to be received from the government, by foregoing the CPF, was to be exercised by the petitioner within one year from the date of absorption. If an employee failed to so opt; it was to be deemed that option had been exercised in favour of receiving CPF benefits. This option once exercised was to be treated as final. The petitioner had vide his letter dated 22.5.1995 informed the respondent that he has withdrawn the terminal benefits from KLP college on 11.2.1995. Therefore, he was not entitled to the grant of the benefit claimed by him.

7. On the question of applicability of doctrine of res judicata it is submitted that the earlier order of the Tribunal in OA No.490/96 only directed the respondent to consider the case of the petitioner afresh since, in the opinion of the Tribunal, the petitioner, prima facie, had a

good case. Thus, there was no adjudication on the status of KLP College as an autonomous body, and therefore, the doctrine cannot be invoked.

8. We have gone through the judgment of the Tribunal in the earlier OA no.490/1996. We find force in the contention of the respondent that the Tribunal had not returned any finding on the status of the KLP College as an autonomous body. No doubt, the Tribunal concluded that the said college receives grants exceeding 50% of its total expenditure. This categorical finding of fact cannot be disturbed by the Tribunal in a subsequent proceeding. However, merely on account of the KLP College receiving grants of exceeding 50% of their total expenditure, it cannot be inferred that the Tribunal also gave a finding to the effect that KLP College was an autonomous body. If that were the case there was no point in the Tribunal directing the respondents to consider the case of the petitioner afresh. The Tribunal would have itself proceeded to grant the relief claimed by the petitioner, since the only hurdle coming in the way of grant of relief to the petitioner was the issue as to whether KLP College was an autonomous body or not.

9. The “mobility policy” as contained in O.M dated 29.8.1984 read with O.M dated 7.2.1986 provides:

> “ .....that benefit of counting of past service will be admissible in four cases of mobility, i.e. mobility between (i) Central Government, (ii) State Government, (iii) Central Autonomous

> Body and (iv) State Autonomous Body. The meaning of an Autonomous Body under the Central Government has been defined in para 4 of the O.M dated 29.8.1984 (P-IX) and is further elaborated in the Department of Pension and Pensioners Welfare O.M dated 31.3.1987. According to these orders:
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> A Central Autonomous body is generally a non-profit making organisation which is financed wholly or substantially from cess or Central Government grants. `Substantially' means that more than 50 per cent of the expenditure of the Autonomous body is met through cess or Central Government grants. An Autonomous body may be a society registered under the Societies Registration Act, 1860 or a statutory body or a Central University having its own Governing Council whose memorandum of association/by-laws etc., contain provision for complying with Government directives for carrying out its business in achieving the objectives for which the organisation is established." The same analogy can be reasonably extended for a State Autonomous body."

10. From the aforesaid it would be seen that for a body to be an autonomous body there are various conditions to be satisfied and the condition that more than 50% of its expenditure is met through cess or Central Government grants is only one of them. The others are that it should be a society registered under the Societies Registration Act, 1860, or a statutory body or central university having its own governing council and, most importantly for our purpose, the memorandum of association/bye-laws etc. should contain provision for complying with Government directives for carrying out its business in achieving the objectives for which the organisation is established.

11. The finding of the Tribunal in paragraph 11 of the impugned judgment that the petitioner had not placed any document on record to show that KLP College, Rewari is a registered society is not correct in view of paragraph (ii) of the order of rejection dated 12.3.2003 passed by the respondents. It is the respondent's own case that KLP College is run by “Public Education Board, Rewari” which is a society registered under the Societies Registration Act, 1860. KLP College by itself does not, have any legal existence. It is an institution established and run by the said society. So far as the condition of the body being a society registered under the Societies Registration Act, 1860 is concerned, the same, therefore, stood satisfied.

12. On the issue regarding the extent of Governmental aid received by KLP College, the Tribunal referred to communications received from KLP College and the State of Haryana. The stand of the KLP College is that they are reimbursed 95% of the deficit of the expenditure on salaries after deducting the income accrued to the college through fees etc. The State of Haryana does not consider KLP College to be an autonomous body because the quantum of grant is not more than 50% of the total expenditure. The Tribunal rightly notes that irrespective of the stand taken by KLP College and the State of Haryana, the matter would have to be examined in the light of the OM dated 31.3.1987 issued by Government of India, Department of Pension and Pensioners Welfare. The Tribunal than proceeds to record a finding

that the petitioner had not been able to establish that more than 50% of the total expenditure is met through Government grants and, more importantly, that the petitioner had not been able to place on record any bye-law or clause in the memorandum of association of KLP College/Public Education Board, Rewar which stipulates that KLP College is bound to comply with Government directives while carrying on its business in achieving the objectives for which the organisation is established.

13. Even if it were to be assumed on the strength of the finding recorded by the Tribunal in its earlier judgment passed in OA No.490/1996, that more than 50% of the financial requirements of the College are fulfilled by Government grants, the petitioner has still not been able to establish that the respondent is an autonomous body since the aforesaid ingredient necessary for qualifying a body as an autonomous body has not been fulfilled by the petitioner in respect of KLP College/Public Education Board, Rewari. Even before us it is not the petitioner's case that Public Education Board, Rewari and the institution run by it namely KLP College satisfied the aforesaid condition, and no document has been produced before either the Tribunal or before us to substantiate the fulfillment of the said requirement. Merely because at the time of fixing the petitioner's pay, he was granted pay protection, one cannot assume that KLP College was an autonomous body and that by itself would not entitled the

petitioner to claim the relief of counting his service with KLP College for any purpose including for purpose of fixing his seniority or pension at the time of his retirement from Government service.

14. Consequently, we have no option but to reject the present petition as devoid of any merit. Dismissed.

VIPIN SANGHI
JUDGE

A.K.SIKRI
JUDGE

November 30, 2007
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